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IN THE SUPREME COURT
OF THE STATE OF OREGON
)
In re the Conduct of:) Case No. 19-81
)
CRAIG WYMETALEK, Bar No. 964641,) AMENDED FORMAL COMPLAINT
)
Respondent.)

For its FIRST CAUSE OF COMPLAINT against the Respondent, Craig Wymetalek (Respondent), the Oregon State Bar (Bar) alleges:

1.

The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2.

Respondent is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Bar, having his office and place of business in the County of Washington, State of Oregon.

Background Facts

3.

David Schwartz (Schwartz) was divorced from his wife pursuant to a general judgment of dissolution entered on or about May 9, 2014, by Clackamas County Circuit Court in Case No. DR13030245 (the dissolution proceeding). There were subsequent post-judgment issues addressed by the court up through November 2015. A true and accurate copy of the court’s Register of Actions for the dissolution proceeding is attached as Exhibit 1 and incorporated by reference herein.

1 4.

2 In or around March 2017, Schwartz retained Respondent to seek modification of the
3 court's spousal support award. Time was of the essence because Schwartz had been laid off and
4 his support obligation was \$3,600 per month.

5 **Respondent's Material Misrepresentations, Deceit, and Dishonest Conduct**

6 5.

7 On or about May 22, 2017, Schwartz asked Respondent, "Are we making progress? Were
8 you able to find a process server and serve my ex-wife in Coeur d'Alene?" In response,
9 Respondent represented that, "The motion is out for service. I had to switch process servers. The
10 first one just sat on it....Hopefully she will be served soon."

11 6.

12 In or around August and September 2017, Schwartz again asked about the status of his
13 case. On or about September 7, 2017, Respondent represented, "Just trying to get an update
14 from the Court. I filed the motion for alternative service, but I haven't heard back whether it was
15 granted or not. I just called the Court to see if I could get an answer and left a message. Once
16 that is granted, we should be able to get her served and move forward." Respondent had not
17 filed a motion for alternative service or any other motion with the court. Respondent's
18 representations were false and material, and Respondent made them knowing that they were
19 false and material.

20 7.

21 On or about October 4, 2017, Respondent emailed Schwartz and represented, "The judge
22 has signed the order for alternative service, but it has not been scanned into the system by the
23 Court." Respondent had not filed any order for alternate service and therefore, no judge had
24 signed any order. Respondent's representations were false and material, and Respondent made
25 them knowing that they were false and material.

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8.

On or about October 11, 2017, Respondent emailed Schwartz, “Just to give you an update – so it looks like the judge is granting the motion for alternative service, however, I was told I had to re-submit the order to show cause because they have changed a rule since I originally filed it. I submitted that today. So once those orders are processed, we can get service done and move forward.” Respondent had not filed any motion for alternative service, and therefore, no judge had granted such a motion. Respondent’s representations were false and material, and Respondent made them knowing that they were false and material.

9.

After a year of no court action, in or around May 2018, Schwartz went to the Clackamas County courthouse to review the court’s file in his dissolution proceeding. Upon reviewing the file, he discovered that Respondent had not filed any pleadings to modify the spousal support award.

10.

On or about May 2, 2018, Schwartz emailed Respondent: “I want an explanation of why there are no records of any filings or signed orders in the records department at the Clackamas County Courthouse ... I expect an immediate response to include an arrangement to provide me with copies of any relevant documents showing signatures....”

11.

In response, on or about May 3, 2018, Respondent fabricated the following three court orders and emailed them to Schwartz:

(a) Order to Show Cause Re: Modification of Spousal Support; purportedly signed by Judge Jeffrey S. Jones, dated May 18, 2017, and time-stamped 11:18 a.m.

1 (b) Order Allowing Alternative Service of Motion, Declaration, and Order to Show
2 Cause; purportedly signed by Judge Jeffrey S. Jones, dated September 25, 2017, and time-
3 stamped 12:54 p.m.

4 (c) Amended Order to Show Cause Re: Modification of Spousal Support; purportedly
5 signed by Judge Robert D. Herndon, dated November 9, 2017, and time-stamped 03:12 p.m.

6 All three of the fabricated orders (the false orders) contained Respondent's firm name
7 and address in the footers of each order. True and accurate copies of the false orders are
8 attached as Exhibits 2, 3, and 4 to this amended formal complaint and incorporated by reference
9 herein.

10 12.

11 In sending the false orders to Schwartz, Respondent represented, "I have not had an
12 opportunity to call the Court and find out why things are not showing up, but I will try tomorrow.
13 I have not encountered this before, but lots of other problems with the electronic filing system.
14 Here are the pleadings and signed orders in this case and the stuff from the process server. I can
15 get you more documents tomorrow if you need more, but this took over an hour to get scanned."
16 Respondent's representations were false and material, and he made them knowing they were
17 false and material.

18 13.

19 At the time Respondent provided Schwartz with the orders, Respondent knew that he
20 had not filed any pleadings in the dissolution proceeding and that he had forged each of the
21 judge's signatures to the false orders without authority to do so.

22 14.

23 In providing the false orders to Schwartz, Respondent knowingly made material
24 misrepresentations to Schwartz in one or more of the following particulars: (1) that Respondent
25 had submitted the orders for entry in Schwartz's dissolution proceeding; (2) that each judge

1 whose purported signature appeared on a false order had signed that order; and (3) that each
2 false order had been entered by the court. These representations were false and material, and
3 Respondent made them knowing they were false and material.

4 15.

5 From May 2017 through May 2018, Respondent intentionally deceived Schwartz by
6 repeatedly making the material misrepresentations identified above, which ultimately
7 culminated in his forgery of the three false orders that he presented to Schwartz. In so doing,
8 Respondent intended to deceive Schwartz into believing that his modification request was
9 proceeding before the court when Respondent had taken no action to advance his client's
10 position. By engaging in such conduct, Respondent engaged in conduct involving deceit that
11 reflects adversely on his fitness to practice law.

12 16.

13 By engaging in the conduct described above, Respondent also engaged in dishonest
14 conduct that reflects a disposition to lie, cheat, defraud, untrustworthiness, and/or a lack of
15 integrity or conduct involving dishonesty that reflects adversely on his fitness to practice law.

16 **Respondent's Criminal Conduct**

17 17.

18 Forgery is a criminal act that is prohibited by ORS 165.007 (misdemeanor) and 165.013
19 (felony). A person commits the crime of forgery in the second degree if, with intent to injure or
20 defraud, the person: (a) falsely makes, completes, or alters a written instrument; or (b) utters a
21 written instrument which the person knows to be forged. ORS 165.007(1). Forgery in the second
22 degree is a Class A misdemeanor pursuant to ORS 165.007(2).

23 18.

24 Pursuant to ORS 165.013, a person commits the felony crime of forgery in the first degree
25 if the person violates ORS 165.007 and the written instrument is or purports to be a public record.

1 19.

2 By fabricating the three false orders and forging the signatures of two judges, Respondent
3 falsely made each of the false orders and intended to defraud his client as to the status of his
4 modification request. The three false orders purported to be official court orders, which are
5 public records. Respondent committed three counts of felony criminal forgery in the first degree
6 in violation of ORS 165.013(1)(a)(E).

7

8 AND, for its SECOND CAUSE OF COMPLAINT against Wymetalek, the Bar alleges:

9 **Respondent's Neglect and Failure to Accurately Communicate with Schwartz**

10 20.

11 Realleges and incorporates by reference the allegations of paragraphs 1 to 19 of its First
12 Cause of Complaint as if fully set forth herein.

13 21.

14 Schwartz hired Respondent in March 2017 to promptly seek modification of the court's
15 prior spousal support award. Thereafter, until the fall of 2018, Respondent did not take a single
16 constructive action to advance his client's goal of support modification.

17 22.

18 In making the material misrepresentations alleged herein and in providing Schwartz with
19 the false orders, Respondent falsely led Schwartz to believe that progress had occurred in the
20 dissolution proceeding. In so doing, Respondent failed to keep his client apprised of the true
21 status of the matter and failed to give his client the information Schwartz needed in order to
22 make informed decisions about the representation and dissolution proceeding.

23 23.

24 The aforesaid conduct of Respondent constituted neglect of a legal matter entrusted to
25 him; failing to keep a client reasonably informed about the status of a matter and promptly

1 comply with reasonable requests for information; failing to explain a matter to the extent
2 reasonably necessary to permit the client to make informed decisions regarding the
3 representation; engaging in criminal conduct that reflects adversely on the lawyer's fitness to
4 practice law; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentations
5 that reflects adversely on the lawyer's fitness to practice law, in violation of the following
6 standards of professional conduct established by law and by the Bar:

- 7 A. RPC 1.3;
8 B. RPC 1.4(a);
9 C. RPC 1.4(b);
10 D. RPC 8.4(a)(2); and
11 E. RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct.

12

13 WHEREFORE, the Bar demands that Respondent make answer to this amended
14 complaint; that a hearing be set concerning the charges made herein; that the matters alleged
15 herein be fully, properly and legally determined; and pursuant thereto, such action be taken as
16 may be just and proper under the circumstances.

17 EXECUTED this 25th day of October 2019.

18

OREGON STATE BAR

19

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By: Courtney C. Dippel
Courtney C. Dippel, OSB No. 022916
Assistant Disciplinary Counsel

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